

ORDINANCE NO.

ORDINANCE AMENDING CHAPTER 7 OF THE CODE OF ORDINANCES OF THE CITY OF ASHEVILLE PERTAINING TO ENVIRONMENTAL PROTECTION STANDARDS FOR SOIL EROSION AND SEDIMENTATION CONTROL AND STORMWATER MANAGEMENT

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

**Section 1:** Section 7-12-2 (Stormwater, Soil Erosion and Sedimentation Control, Illicit Discharge and Connection Ordinance) of Chapter 7 of the Unified Development Ordinance (UDO) of the Code of Ordinances of the City of Asheville is hereby repealed in its entirety, and replaced with a new section 7-12-2 to read as follows:

**(a) Authority, Purpose, Objective, Findings, Jurisdiction, Applicability, Exemptions**

(1) **Authority:** This section is adopted pursuant to NCGS 143-214.7 and applicable rules promulgated by the North Carolina Environmental Management Commission (NCEMC) thereunder; Session Law 2006-246; Chapter 160A (Cities and Towns), Article 14 and Article 19 (Planning and Regulation of Development); Section 5 of the North Carolina Constitution; Chapter 113A, Article 4 (Sedimentation Pollution Control); Article 21, Part 6 (Floodway Regulations).

(2) **Purpose:** It is the purpose of this section to comply with the federal and corresponding state stormwater discharge National Pollution Discharge Elimination System (NPDES) regulations; to protect, maintain and enhance the environment of the City of Asheville (City), by establishing minimum requirements and procedures to control the potential adverse effects of increased stormwater runoff associated with both future development and existing developed land and non-point and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems; to regulate the clearing, grading, excavation, filling and manipulation of the earth and the moving and storing of waters in order to control and prevent accelerated soil erosion and sedimentation; and to establish decision-making processes for development that protect the integrity of watersheds and preserve the health of water resources.

(3) **Objectives:** To assure the City of the authority to take any action required by it to obtain and comply with its NPDES permit for stormwater discharges. Among other things, these regulations require the City to establish legal authority which authorizes or enables the City at a minimum to:

- a. Control the contribution of pollutants to the City's MS4 and receiving waters by stormwater discharges associated with residential, commercial, industrial, and related facility activity and the quality of stormwater discharged from sites of residential, commercial, industrial, and related facility activity; and
- b. Prohibit illicit discharges and illicit connections to the City's MS4 and receiving waters; and control the discharge to the City's MS4 and receiving waters, of spills, dumping or disposal of materials other than stormwater; and
- c. Control through intergovernmental agreements, contribution of pollutants from one municipal stormwater system to another; and
- d. Control accelerated erosion and sedimentation; and

e. Require compliance with conditions in ordinances, permits, contracts or orders as follows:

1. To establish and implement all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition of illicit discharges and illicit connections to the City's MS4 and receiving waters;
2. To require that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm in order to reduce flooding, stream bank erosion, non-point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats for biological/ecological function and drainage;
3. To encourage the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of green space and other conservation areas to the maximum extent practicable (MEP);
4. To establish provisions for the short-term and long-term responsibility for and maintenance of structural and non-structural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety; and to minimize public and private property damage resulting from erosion, sedimentation and flooding; and to regulate developments that create demand for public investment in flood control works.

(4) Findings:

- a. Stormwater runoff can have a significant adverse impact on the health, safety and general welfare of the City and on the quality of life of its citizens. These impacts can be in the form of pollution to our water bodies, erosion and sedimentation, flooding and other degrading impacts.
- b. The sedimentation of streams, lakes, wetlands and other waters of this State constitute a major pollution problem. Sedimentation occurs from the erosion or depositing of soil and other materials into the waters. Control of erosion and sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for erosion and sedimentation control programs shall be deemed for a public purpose.
- c. Changes in land use can create adverse impacts. The City has been designated a Phase II Municipal Separate Storm Sewer System (MS4) Community under the NPDES and is required to obtain a permit pursuant to the 1972 Federal Water Pollution Control Act as amended in 1987 as well as the applicable and statutory laws promulgated thereunder. In response to these requirements this jurisdiction is compelled to adopt minimum stormwater controls such as those included in this section.
- d. The City is in a unique geographic area with steep slopes, erodible soils, extreme rainfall patterns and other unique factors that require special attention and specifically different requirements from other jurisdictions.

(5) Jurisdiction: With the exception of applying subsection 7-12-2(k), pertaining to the Prohibition, Detection and Elimination of Illicit Connections, Illicit Discharges and Improper Disposal to the Stormwater System in the City's extraterritorial jurisdiction, this section shall apply to the territorial and extraterritorial jurisdictions of the City as well as to all properties owned by the City within Buncombe County to include the areas designated on the map entitled "Phase II Stormwater Map of the City of Asheville, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith along with all explanatory matters contained thereon and made a part of this section.

(6) Applicability: Unless exempted pursuant to subsection 7-12-2(a)(7) below, beginning with and subsequent to its effective date, this section shall be applicable as follows:

- a. All development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and land-disturbing applications.
- b. The provisions of subsection 7-12-2(k), pertaining to Prohibition, Detection and Elimination of Illicit Connections, Illicit Discharges and Improper Disposal to the Stormwater System shall apply to all properties, lands, City's MS4 and waters of the State within the territorial jurisdiction of the City as well as to all properties owned by the City within Buncombe County.

(7) Exemptions:

a. The following activities for land-disturbance shall be exempt from the provisions of the Erosion Prevention and Sediment Control regulations of subsection 7-12-2(e):

1. An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to: forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts, dairy animals and dairy products, poultry and poultry products, livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats, bees and apiary products, and fur producing animals.
2. An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality and the Forestry Best Management Practices Manual, as adopted by the North Carolina Division of Forest Resources. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality and the Forestry Best Management Practices Manual, the provisions of this section shall apply to such activity and any related land-disturbing activity on the site.
3. An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the North Carolina General Statutes.
4. Land-disturbing activities over which the State of North Carolina has exclusive regulatory jurisdiction as set forth in NCGS §113A-56(a).
5. An activity which is essential to protect human life during an emergency and those done for the purpose of fighting fires;
6. The stock-piling of fill dirt, raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage;
7. Individual gravesites; \_\_\_\_\_ Deleted: and \_\_\_\_\_
8. Maintenance of existing lawns where there is no change in contours;

9. Gardens, similar horticultural activities that disturb less than one acre; and

10. Land disturbing activities totaling 500 square feet or less and located 50 feet or greater from a perennial or intermittent stream.

b. The following activities for land-disturbance shall be exempt from provisions of the Post-Construction Stormwater Control regulations of subsection 7-12-2(f)(1) and (2):

1. Development that cumulatively disturbs less than one acre and will have a proposed impervious surface area on completion of development of fifty percent or less of the total acreage of the development site; provided however, such is not exempt if part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

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2. Redevelopment that cumulatively disturbs less than one acre and will have a proposed impervious surface area on completion of development of fifty percent or less of the total acreage of the development site; provided however, such is not exempt if part of a larger common plan of redevelopment or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

Deleted: 2. Redevelopment that results in no net increase in built-upon area and that provides equal or greater stormwater control than the previous development on the site. ¶

3. Development and/or redevelopment of a single one or two family dwelling that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale.

c. The following activities for land-disturbance shall be exempt from all provisions of the Post-Construction Stormwater Control regulations of subsection 7-12-2(f):

1. Redevelopment that results in no net increase in built-upon area and that provides equal or greater stormwater control than the previous development on the site.

2. Activities that are exempt from the permit requirements of Section 404 of the federal Clean Water Act (CWA), as specified in 40 CFR 302 (primarily, ongoing farming and forestry activities).

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**(b) Administration**

(1) Stormwater Administrator. The City Manager shall appoint a Stormwater Administrator to administer and enforce all provisions of this section. Except as specifically stated, any act authorized by this section to be carried out by the Stormwater Administrator may be carried out by his/her designee.

(2) Powers of the Stormwater Administrator. In addition to all other customary and incidental powers of the office of Stormwater Administrator as well as the powers and duties that may be conferred by other ordinances of the City and other applicable laws, statutes, rules and regulations, the Stormwater Administrator shall have the following powers:

a. Day to day coordination, implementation and enforcement of this section and the Stormwater Management Program (SWMP), to include but not limited to: monitoring construction site runoff, illicit discharges and improper disposal.

b. The coordination and enforcement of the City's NPDES Permit and the coordination of the City's activities with other federal, state, and local agencies, which manage and perform functions relating to the protection of receiving waters.

c. To render interpretations, perform reviews, make recommendations including permit fees and revisions to Fees and Charges Manual, approve or disapprove permit applications with or without conditions, establish timelines for the submittal and appeals of application decisions and to establish policies to include refund of permit fees.

d. To enter into agreements with other governmental and private entities to carry out the purposes of this section upon approval of the City Manager. These agreements may include, but are not limited to, enforcement, resolution of disputes, cooperative monitoring, cooperative management of stormwater systems and cooperative implementation of stormwater management programs.

e. To designate what programs and activities represent the promotion of improving water quality to receive funding from the City's Civil Penalty Mitigation Fund.

f. To exercise powers not expressly reserved for other agencies or restricted by statute for the protection and preservation of receiving waters.

(3) Duties of the Stormwater Administrator: The duties and responsibilities of the Stormwater Administrator include but are not limited to:

a. Developing and maintaining a Stormwater BMP Manual in accordance with the approved SWMP. The Stormwater BMP Manual shall serve as guidance for permitting, design, construction, and maintenance of facilities which discharge stormwater both during construction and post-construction.

b. Providing information on how and where to obtain the Stormwater BMP Manual, which shall be made available to the public.

c. Providing an opportunity for comment by interested persons after making recommended revisions/amendments to the Stormwater BMP Manual and publishing the same.

d. Preparing and updating annually the Stormwater Map, consistent with the City's NPDES permit requirements.

e. Creating a Civil Penalty Mitigation Fund whereby all monies collected by the office of the Stormwater Administrator arising out of the enforcement of this section shall be used solely and directly for the purpose of promoting, providing and improving water quality.

**(c) Requirements and Process for Compliance**

**(1) General Requirements:**

a. Protection of Property: In addition to the requirements contained in this section, persons conducting development or redevelopment and associated land-disturbing activity shall take all reasonable measures to protect natural resources and all public and private property from damage caused by such activity.

b. *Financial Responsibility and Ownership:* A financial responsibility and ownership statement shall be required as a part of all completed permit applications. This financial responsibility and ownership statement shall be signed by the person financially responsible for the land-disturbing activity or his/her attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the property, and (3) any registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with this section. If the applicant is not the owner of the property to be disturbed, the permit application must include the owner's written consent for the applicant to submit a permit application and to conduct the proposed development, redevelopment or land-disturbing activity.

c. *Flood Protection:* No grading and stormwater permit shall be issued for development or redevelopment and associated land-disturbing activity in the regulated floodplain prior to meeting the requirements of the floodplain regulations of section 7-12-1 of the UDO.

d. *Release of Building Permits:* The Director of Building Safety shall not issue any building permits for projects on sites where a grading and stormwater permit is required unless and until the grading and stormwater permit has been issued.

**(2) Permit Application Requirements:**

a. *Plan and Permit:* An approved plan along with a grading and stormwater permit shall govern the design, installation, and construction of erosion and sediment control and stormwater management, control practices and measures on the site for both during construction and post-construction.

b. *Permit Application:* A permit application, intended to provide a mechanism for the review, approval, and inspection of the practices and measures for erosion, sediment and stormwater management and control, is required for all development and redevelopment unless exempt pursuant to this section.

c. *Contents of Permit Application Package:* At a minimum, the permit application package shall include: an application form, a design plan, appropriate fees and a statement of financial responsibility and ownership.

d. *Additional Permit Application Requests:* Depending on the scope of the development, redevelopment or land-disturbing activity, additional items may include, but are not limited to, design calculations, certificate of inspection agreements, approved encroachment agreements, easements, and approved permits from other local, state or federal agencies.

e. *Prerequisites to Issuance of a Permit:* Prior to the issuance of a permit pursuant to this section, all of the following requirements must be met:

1. A pre-construction conference, if required by the Stormwater Administrator, along with the submittal and review of a permit application.
2. Submittal of an authorized statement of financial responsibility and ownership.
3. Notification to the Stormwater Administrator of the date that land-disturbing activity

will begin.

4. Installation of the erosion control measures which are required for the initial stage of land disturbance per the approved plan and having the control measures inspected and a compliance report filed.
5. A certificate of inspection agreement, if applicable, as required by subsection 7-12-2(g)(5)d.1.
6. A security for re-vegetation, if applicable, as required by subsection 7-12-2(e)(2)h.3.

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f. *Duration of Permit:* The approved plan and permit remains valid for one year after the date of approval; provided however, for maintenance of facilities, such as golf courses and large institutional grounds keeping, the approved plan and permit remains valid for five years. Prior to the initiation of any land disturbing activity, the applicant shall comply with the notification requirement of subsection 7-12-2 (c)(2)e.3 herein.

g. *Extensions.* Extensions of a plan approval may be granted once by the Stormwater Administrator, for a maximum of one year duration, upon written request of the person responsible for the land-disturbing activity. A written request for an extension must be submitted to the Stormwater Administrator no more than 60 days prior to the expiration of the original permit.

(3) *Permit Application Process:* The permit application process shall be as follows:

a. *Application Submittal:* All permit applications shall be submitted to the Development Services Center at least 30 days prior to the commencement of the proposed land-disturbing activity.

b. *Who Can Apply:* All permit applications shall be complete and submitted by the property owner or the property owner's duly authorized agent. A permit application shall be considered complete only when it contains all required documents.

c. *Incomplete Application:* If a permit application is incomplete, which may include the absence of an environmental document required by the North Carolina Environmental Policy Act (NCEPA) (NCGS 113A-1 et seq.), the applicant shall be notified of what documents are missing and shall be provided with an opportunity to submit a complete application.

d. *Consequences of Submittal of an Incomplete Application:* The submittal of an incomplete application shall not suffice to meet a deadline or start the time allotted for review nor shall the time limit for review begin until a complete permit application has been submitted.

e. *Commencement:* The land-disturbing activity shall not commence until the permit application has been approved and an inspection has been performed by a North Carolina professional engineer or landscape architect or a City inspector to ensure that the protective measures shown on the approved plan have been installed in accordance with the approved plan and a permit is issued.

f. *Notification to Other Agencies:* Upon approval of a permit for proposed land disturbance of one acre or greater, the Stormwater Administrator will send a notification of the proposed project to the Regional Office of the North Carolina Department of Environment and Natural

Resources (NCDENR)-Division of Water Quality (DWQ) and to the Buncombe County Metropolitan Sewage District. The notification shall include the applicant's name and contact information and the proposed site location.

(4) *Design Plans:* A design plan shall be submitted with the permit application for all land-disturbing activity, unless exempt pursuant to this section. The following are the minimum design plan requirements:

a. *Sketch Plan:* For proposed development, redevelopment or land-disturbing activity with a proposed disturbance area of less than 10,000 square feet and which is exempt from the Post-Construction Stormwater Control regulations of subsection 7-12-2(f), a sketch plan must be submitted. At a minimum, the sketch plan shall include the information on the form entitled "Requirements for Non Formal Sketch Plans," available upon request from the office of the Stormwater Administrator.

b. *Formal Plan Exempt from Post-Construction Stormwater Regulations:* For proposed development, redevelopment or land-disturbing activity with a proposed disturbance area of 10,000 square feet or greater but which is exempt from the Post-Construction Stormwater Control regulations of subsection 7-12-2(f), a formal design plan shall be submitted. Design plans shall be submitted and at a minimum shall include the information on the form entitled "Requirements for Formal Grading/Erosion Plans," available upon request from the office of the Stormwater Administrator.

c. *Formal Plan Not Exempt from Post-Construction Stormwater Regulations:* For proposed development, redevelopment or land-disturbing activity that is required to meet the Post-Construction Stormwater Control regulations of subsection 7-12-2(f), a formal design plan shall be submitted. Design plans shall be submitted and at a minimum shall include the information required in the preceding paragraph b. above and the requirements on the form entitled "Requirements for Stormwater Plans," available upon request from the office of the Stormwater Administrator.

d. *Certification of Design Plan:* All formal plans shall be prepared by a qualified registered North Carolina professional engineer or landscape architect, and the professional shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete permit applications, that the design and plans are sufficient to comply with applicable standards and that the design and plans ensure compliance with this section.

e. *Approval of Design Plan:* The design plan shall not be considered approved without the inclusion of an approval stamp with a signature and date on the design plan by the Stormwater Administrator. The stamp of approval on the design plan is solely acknowledgement of satisfactory compliance with the requirements of this section and shall not serve as a warranty to the applicant or any other person concerning the safety, appropriateness of effectiveness of any provision, or omission from the design plan.

f. *Review of the Design Plan by Other Agencies:* Upon approval of a permit for proposed land-disturbance of one acre or greater, the Stormwater Administrator will forward, as required, one copy of the design plan to the Buncombe County Soil and Water Conservation District ("District") for its review. The District shall review the design plan and submit its comments and recommendations to the Stormwater Administrator within 20 days after the District received the design plan. Failure of the District to submit its comments and



recommendations to the Stormwater Administrator within the prescribed time shall not delay final action on the permit application by the Stormwater Administrator.

(5) Review and Approval:

a. *Preconstruction Conference:* When deemed necessary by the Stormwater Administrator due to the complexity, risk or ingenuity of a project, a preconstruction conference may be required.

b. *Timeline for Review of Permit Applications:* The Stormwater Administrator will review each complete permit application with formal plans within 30 days and for sketch plans within 15 days of receipt thereof and notify the person submitting the permit application that it has been approved, approved with conditions, approved with performance reservations, or disapproved.

c. *Approval:* If the Stormwater Administrator finds that the permit application complies with the standards of this section, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this section, or other local, state or federal regulations. The conditions shall be included as part of the approval.

d. *Disapproval for Content:* The Stormwater Administrator shall disapprove a permit application if it is found that the application fails to comply with the standards of this section, and shall notify the applicant of the reason(s) for the disapproval. The applicant shall have an opportunity to submit a revised application.

e. *Other Disapproval:* The Stormwater Administrator shall disapprove a permit application if implementation of the permit application would result in a violation of the rules adopted by the NCEMC to protect riparian buffers along surface waters. In the event that a permit application is disapproved pursuant to this paragraph, the Stormwater Administrator shall notify the Director of the Division of Land Resources (DLR) of NCDENR of such disapproval within ten days. The City shall advise the applicant and the Director of the DLR in writing as to the specific reasons that the plan was disapproved. A permit application may also be disapproved upon finding that an applicant, or a parent, subsidiary, or other affiliate of the applicant is:

1. Conducting or has conducted development, redevelopment or land-disturbing activity without an approved plan, or has received notice of violation of an approved plan and grading and stormwater permit previously approved by NCEMC or a local government pursuant to the Sedimentation Pollution Control Act (Act) and has not complied with the notice within the time specified in the notice.
2. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due.
3. Has been convicted of a misdemeanor pursuant to NCGS 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or (For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date).

4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

f. *Failure to Timely Approve:* Failure to approve, approve with modifications, or disapprove a complete permit application with formal plans within 30 days of receipt shall be deemed approved. Failure to approve, approve with modifications, or disapprove a permit application with a sketch plan within 15 days of receipt shall be deemed approved.

g. *Review of Revised Permit Application:* The Stormwater Administrator will review each revised permit application submitted and within 15 days of receipt thereof, will notify the person submitting the permit application that it has been approved, approved with modifications, approved with performance reservations, or disapproved.

h. *Failure to Recognize:* Any failure of the Stormwater Administrator in administering this section to include but not limited to: recognizing hazardous conditions, failure to disapprove the permit application, failure to inspect, to issue a notice of violation, assess a civil penalty or file a civil action, shall not relieve the owner from responsibility for the conditions or damages resulting therefrom and shall not result in the City, its officers or employees, being responsible for the damages resulting therefrom.

i. *Failure to Timely Submit Revised Application:* If a revised permit application is not re-submitted within 180 days from the date the applicant was notified of the disapproval, the permit application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee.

j. *Amendment to a Plan:* Applications for amendment of a permit application in written and/or graphic form may be made at any time under the same conditions as the original permit application. Until such time as said amendment is approved by the Stormwater Administrator, the land-disturbing activity shall not proceed except in accordance with the permit application as originally approved. The review process for the amendment shall be the same as for a new permit application submittal.

**(6) Other Considerations of the Review and Approval Process:**

a. *Display of Approved Plan and Permit:* The approved plan and grading and stormwater permit must be kept on file at the job site until the job is stabilized and completed.

b. *Revised Permit Application After Approval:* The Stormwater Administrator may, after approving a permit application, require a revised application upon making the following findings:

1. Either upon review of such permit application or on inspection of the job site, determines that a significant risk of accelerated erosion, off-site sedimentation, or risk of damage due to stormwater flows exists.
2. Upon finding that the erosion and sedimentation control or the post-construction stormwater control measures presented in the permit application are inadequate to meet the requirements of this section.

c. *Status of Work:* Pending the preparation of the revised permit application, work shall cease or may continue under conditions outlined by the Stormwater Administrator.

**(d) Permit Close Out and Release Requirements**

(1) Permit Close Out: For all development, redevelopment and land-disturbing activity, which requires a grading and stormwater permit pursuant to the provisions of this section, no certificate of compliance or occupancy shall be issued by the City without a final release of the grading and stormwater permit by the Stormwater Administrator, except where multiple units are served by a single grading and stormwater permit, in which case the City may elect to withhold a percentage of permits or certificates of occupancy until a final release of any required performance securities.

**(2) Final Release Requirements:**

a. As-Built Record Drawings: For all development, redevelopment and land-disturbing activity which require structural BMPs, stormwater management control facilities, conveyances and related improvements, an as-built record drawing must be submitted and approved by the Stormwater Administrator. The as-built record drawing shall be certified, signed and sealed by a North Carolina professional engineer or landscape architect. Requirements for the as-built record drawing and submittal can be found in the Stormwater BMP Manual.

b. Certificates of Completion: For all development, redevelopment and land-disturbing activity which require structural BMPs, stormwater management control facilities, conveyances, and related improvements, a certificate of completion must be submitted by the professional engineer or landscape architect, the property owner, the developer and the contractor to the Stormwater Administrator. The certificate serves to certify that all facilities and improvements have been constructed and installed per the approved design plan, as-built record drawing and requirements set forth in the Stormwater BMP Manual. The certificate of completion form shall be available from the office of the Stormwater Administrator.

c. Operation and Maintenance Agreement: For all development, redevelopment and land-disturbing activity which require structural BMPs or stormwater management control facilities, an operation and maintenance agreement must be submitted and approved by the Stormwater Administrator, on a form available from the office of the Stormwater Administrator.

d. Slope Stability Certifications: For all development, redevelopment and land-disturbing activity which require a slope stability certificate in accordance with the provisions of this section, the slope stability certificate must be submitted and approved by the Stormwater Administrator. The slope stability form shall be available from the office of the Stormwater Administrator.

e. Other Requirements: Depending on the scope of the development, redevelopment and land-disturbing activity, other items may be required for final approval. These may include, but are not limited to, easements and plats.

(3) Final Inspection: The Stormwater Administrator shall perform a final inspection verifying that all disturbed areas have been stabilized, that all permanent erosion control measures and stormwater management BMPs, facilities and improvements have been installed per the approved design plan, as-built record drawing and compliance with all requirements set forth in

the Stormwater BMP Manual. A Certificate of Occupancy shall not be issued until there is a final inspection signed by the Stormwater Administrator.

**(e) Erosion Prevention and Sediment Control**

(1) *Basic Control Objectives:* An erosion and sedimentation control plan shall be disapproved if the plan fails to address the basic control objectives. The basic control objectives which are to be considered in developing and implementing an erosion and sedimentation control plan are:

a. *Identify Critical Areas:* On-site areas which are subject to severe erosion and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation are to be identified and receive special attention;

b. *Limit Time of Exposure:* All land-disturbing activities are to be planned and conducted to limit exposure to the shortest practicable time;

c. *Limit Exposed Area:* All land-disturbing activities are to be planned and conducted to limit the size of the area to be exposed at any one time;

d. *Control Surface Water:* Surface water runoff originating upgrate of exposed areas shall be controlled to reduce erosion and sediment loss during the period of exposure;

e. *Control Sedimentation:* All land-disturbing activities shall be planned and conducted so as to prevent off-site sedimentation damage; and

f. *Manage Stormwater Runoff:* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans must include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation in the stream.

**(2) Mandatory Standards for Land Disturbing Activity:**

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

- (1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

2. *Measurement of Aquatic Buffer Width:* The width of the aquatic buffer is measured horizontally from the top of bank to the landward side of the watercourse (i.e. moving perpendicularly away from the water toward uplands or disturbed areas).

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3. *Overgrowth of Greenery:* Removal of invasive species, undergrowth and selective thinning of trees smaller than four inches in diameter is allowed within the aquatic buffer provided notice is given to the office of the Stormwater Administrator.

Comment [MRT1]: Note: This should be interpreted as total removal, including removal of roots, etc. regardless of the amount of land disturbing activity that occurs.

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4 *Stabilization of Riverbanks:* Most land disturbing activities in and on the bank of perennial and intermittent waters are regulated by the U.S. Army Corps of Engineers under Section 404 of the Federal CWA and the North Carolina Division of Water Quality under Section 401 of the Federal CWA. In addition, a grading permit is required unless the activity is exempt as described in subsection 7-12-2(a)(7). In all cases, and to the maximum extent practicable, riverbank stabilization activities must use bioengineering methods and principles of natural design rather than concrete walls and other hardened structures.

5. *Trout Buffers:* No land-disturbing activity shall be undertaken within an aquatic buffer adjacent to designated trout waters, as classified by the NCEMC that will cause adverse temperature fluctuations in the trout waters, as set forth in 15 NCAC 2B.0211 "Fresh Surface Water Classification and Standards." Exceptions and variances to buffers along designated trout streams may only be granted by DENR-Division of Land Resources.

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b. *Grading Activity in a Designated Landscape Buffer Zone.* When developing a site in a designated landscape buffer zone, the following shall apply:

1. Land-disturbance is permitted in the designated landscape buffer zone and the developer is required to plant trees and shrubs which are 50 percent larger than normally required in order to re-establish quickly a visual buffer.

2. Utilities are to be installed along the edge of the designated landscape buffer zone and cross perpendicular to the designated landscape buffer zone. Land-disturbance that occurs in a designated landscape buffer zone shall not result in a slope that exceeds 3:1. Developers will be encouraged to provide as gradual a slope as practicable in the buffer area to provide increased soil stability and a better planting environment for buffer trees and shrubs.

3. The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

Deleted: b. Aquatic Buffers Post-Construction: For the permitting of land disturbing activities that are not exempt from the post construction stormwater control regulations, subsection 7-12-2(f)(3) of this section shall govern the aquatic buffer requirements. For the permitting of land disturbing activities that are exempt from post construction stormwater control regulations as set forth in subsection 7-12-2(a)(7)b of this section, post construction aquatic buffers are not required. For land disturbing activities post construction, the following provisions shall govern aquatic buffers: ¶

¶ <#>Undisturbed Aquatic Buffer Zone: Aquatic buffers along perennial and intermittent ¶ waterbodies shall be required as set forth in the following table: ¶

Table 1

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c. *Grading Along Property Line:* For land-disturbing activities for which a formal erosion and sedimentation control plan is required by this section, no grading activity or land-disturbance may be conducted within 10 feet of any property line unless written notice of the grading activity or land-disturbance has been provided to the adjacent property owner and approval of the Stormwater Administrator has been received. Grading for access point and utility extensions shall be exempt from this subsection.

d. *Grading Without an Approved Development Plan:* Land-disturbance without an approved development plan, defined as the grading of a site for which no development plan has been approved, is permitted in all districts except the residential districts and the river district if the

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following conditions are met:

1. A landscape plan must be approved by the Planning Department and an erosion control plan must be approved by the Stormwater Administrator prior to initiation of the land-disturbance activity. No grading and stormwater permits shall be issued prior to review and approval of the landscape plan by the Planning Department.
2. The landscape plan must show the location of existing trees to be preserved and the location and type of any required buffer yard trees and street trees which will remain. The determination of the type of buffer required shall be based upon the most intense development permitted in the zoning district in which the project being graded is located.
3. All required trees shall be planted within 30 days of completion of the land-disturbance activity or within 12 months of the date the land-disturbance activity was initiated, whichever is less. This time period may be extended through the posting of a financial guarantee as provided for in section 7-11-2 of the UDO.
4. An effective permanent ground cover shall be applied on the site within 14 days of completion of the land-disturbing activity unless completion occurs outside a growing season, in which case an effective temporary ground cover shall be applied within 14 days. No ground cover shall be required for bare rock.

e. Graded Slopes and Fills:

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1. **Angle:** The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 14 days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints. The use of gunite or similar materials is not allowed as a method for slope stabilization.
2. **Benches:** Terracing or slope breaks should be used on steep slopes to reduce the length of cut and fill slopes to prevent erosion and formation of gullies. Benches should be five feet wide, rounded at the edges, and spaced according to the following table:

Slope	Spacing
50% (2:1)	No more than 20 vertical feet
33% (3:1)	No more than 35 vertical feet
25% (4:1)	No more than 45 vertical feet

3. **Compaction Requirement:** All fill slopes shall be compacted full depth to not less than ninety-five percent (95%) maximum density (Standard Proctor), shall be placed on a surface cleared of growth and debris, and be properly benched and drained.
4. **Severe Slopes:** All constructed severe slopes greater than 2:1 shall be designed by a North Carolina registered professional engineer. Additionally, for constructed severe slopes greater than five feet in height, an inspection and a stability certificate are required by a North Carolina registered professional engineer with geotechnical expertise sufficient to perform the inspection and stability analysis. For all constructed

severe slopes within proposed or existing public right-of-ways, periodic inspections and compaction reports are required by a North Carolina registered professional engineer with geotechnical expertise.

5. *Slope Setback Requirements:* Setback from existing adjacent property and right-of-ways lines is required for retaining walls and constructed moderate and severe slopes as indicated. For the purpose of this subsection, constructed moderate and severe slopes shall include those created for the construction of retaining walls. The setback shall be measured from and applied for both the head and the toe of the slope.

a) The setback shall be equal to the maximum height of the slope.

b) The required setback may be reduced if a subsurface exploration analysis of the area is completed by a North Carolina registered professional engineer with geotechnical expertise and the analysis indicates that the reduction in the setback will not cause greater risk of damage to adjacent public and private properties.

6. *Stability Certificate Findings:* At a minimum, the stability certificate must state that the slope is free of failures, including, but not limited to cracks, sloughs and slippages, that the compaction requirement as set forth above has been met, that soil should remain in its original configuration and that temporary or permanent ground cover is provided. The stability certificate must be submitted and approved before a Certificate of Occupancy is issued.

7. *Fill Material:* Unless a permit from NCDENR-Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

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8. *Access and Haul Roads:* Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

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9. *Allowable Disturbances:*

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1. *Maximum Limits of Disturbance at One Time:* Land-disturbance in any area with a natural average slope in excess of fifteen percent (15%) shall be limited to disturbing not more than five (5) acres at a time. Any one disturbed area must be stabilized per the requirements of the Soil Erosion and Sediment Control Standards as set forth in this section prior to beginning disturbance on any subsequent area.

a) The Stormwater Administrator may grant a waiver to the five acre limitation but only if: (i) the disturbance does not exceed 20 acres; and (ii) the erosion and sediment controls in the formal plan are designed for a 50-year storm; and (iii) a North Carolina licensed registered professional is contracted with to perform all required inspections as required by subsection 7-12-2(g)(5); and (iv) the area of disturbance is located a minimum of 50 feet from a perennial or intermittent stream or down slope properties.

b) For the purposes of this provision, non-contiguous areas located within 1,500 feet of each other and owned and/or developed by the same person(s) shall be considered the same project.

2. *Steep Slope and Others:* For properties where steep slope and/or ridgetop protection regulations apply, as defined in Section 7-12-4 of the UDO, limits on maximum allowable disturbance shall be as indicated by those applicable regulations. The as-built record drawing must be submitted and approved by the Stormwater Administrator prior to final inspection approval for any phase of land-disturbing activity.

3. *Security for Re-Vegetation:* A security for re-vegetation is required for all land-disturbances which exceeds five acres. The security shall be in the form of a construction bond, letter of credit, or certified check and must be provided prior to the issuance of the grading and stormwater permit. The security shall be sufficient to re-vegetate proposed disturbed areas and shall be valid for one year from the issuance of the permit and be updated throughout the process.

i. Borrow and Waste Area:

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1. When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by NCDENR-Division of Waste Management, shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

2. The formal plan shall include a soil volume balance calculation and state if there will be borrowed or waste fill material used. If borrowed or waste fill material is generated, an approved grading permit must be secured for the borrow or waste material site prior to initiation of any land-disturbing activity, unless the site is not excluded by the mining or landfill act.

(3) Design and Performance Standards:

a. *Design Storm Protection:* Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures. If an area has been listed on the Watershed Overlay Zone Inventory by the Stormwater Administrator, erosion control measures for such sites or specific measures on a site shall be designed for, at a minimum, the 25-year storm. The Watershed Overlay Zone Inventory is available from the office of the Stormwater Administrator. The Watershed Overlay Zone Inventory shall be subject to a bi-annual review, the process and method for such a review shall be established by policy of the Stormwater Administrator.

b. *Innovative Measures:* Erosion and sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and



may be used following approval by the Stormwater Administrator if it can be demonstrated that such techniques and ideas are likely to produce successful results.

c. *Watershed Overlay Zone*: In watershed overlay zones, the following design standards shall apply:

1. Uncovered areas in watershed overlay zones shall be limited at any time to a maximum total area of 20 acres within the boundaries of the site. Only the portion of the land-disturbing activity within a watershed overlay zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the site with the written approval of the Stormwater Administrator.
2. Erosion and sedimentation control measures, structures, and devices within watershed overlay zones shall be planned, designed and constructed to provide protection from the runoff of the 25-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or other calculations or procedures generally recognized in the field including those adopted by any other agency of this State or the United States or any generally recognized organization or association and approved by the Stormwater Administrator.
3. Sediment basins within watershed overlay zones shall be designed and constructed such that the basin will have an overall sediment removal efficiency of at least 85 percent and a settling efficiency of at least 70% for the 40 micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or other calculations or procedures generally recognized in the field including those adopted by any other agency of this State or the United States or any generally recognized organization or association and approved by the Stormwater Administrator.
4. Newly constructed open channels in watershed overlay zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical (2:1) if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.
5. Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a watershed overlay zone within 14 days following completion of construction. When construction activity has ceased in a particular site of a larger development, effective permanent ground cover must be applied within 14 days from the date of the last land-disturbing activity.
6. Any additional reasonable measures determined by the Stormwater Administrator to be required to bring the City of Asheville into compliance, or to maintain compliance with, provisions of the City's NPDES Stormwater Discharge Permit, a Total Maximum Daily Load (TMDL) once approved by the State of North Carolina or the U.S. Environmental Protection Agency for one or more pollutants, a consent decree or other order issued

under the provisions of the Clean Water Act (33 USC 1251 et. seq.) or other federal or state law or regulation.

**(4) Stormwater Outlet Protection:**

a. *Intent:* Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.

b. *Performance Standard:* Persons engaged in land-disturbing activity shall conduct such activity so that the post-construction velocity of the ten-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

1. The non-erosive velocities for the downstream channel conditions as specified in the North Carolina Erosion and Sediment Control Planning and Design Manual, or
2. The velocity of the ten-year storm runoff in the receiving watercourse prior to development.

c. *Acceptable Management Measures:* Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The City recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

1. Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
2. Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
3. Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
4. Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
5. Upgrade or replace the receiving device structure, or watercourse, such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

d. *Non-Applicability:* This subsection pertaining to stormwater outlet protection shall not apply where the applicant can demonstrate through engineer analysis on the sealed plans that stormwater discharge volumes and velocities will not create an erosion problem in the receiving watercourse.

**(5) Operations in Lakes or Natural Watercourses:** Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse falls within the jurisdiction of appropriate state and federal agencies, including but not limited to NCDENR – Division of Water Quality and the Army Corps of Engineers. Developers should consult with the

appropriate state and/or federal agencies to obtain the necessary permits and requirements. In all cases and to the maximum extent practicable, operations in lakes and natural watercourses shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.

**(6) Uncovered Areas:**

a. *Ground Cover:* Whenever land-disturbing activity is undertaken on a site, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the site during construction upon and development of said site, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 14 days following completion of construction or development. To the maximum extent practicable, native or indigenous plant species shall be used for permanent ground cover.

b. *Existing Uncovered Areas:* All uncovered areas existing on the effective date of this section which resulted from land-disturbing activities, and are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.

c. *Extensive Control Measures:* The Stormwater Administrator reserves the right to require preparation and approval of an erosion control plan in any instance wherein extensive control measures are required.

d. *Planned Reservoir:* This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.

e. *Fee:* No fee shall apply to work required under this subsection except when the Stormwater Administrator exercises the right to require an erosion control plan.

**(7) Responsibility for Installation, Operation, and Maintenance of Temporary and Permanent Soil Erosion and Sedimentation Control Measures:**

a. *During Construction:* During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent soil erosion and sedimentation control measures as required by the approved plan, by any provision of this section, by any order adopted pursuant to this section, or any provision of the North Carolina Sediment Pollution Control Act.

b. *After Construction:* After site development, the property owner or person in possession or control of the land shall install and/or maintain all necessary permanent soil erosion and sedimentation control measures, except those installed within a road or street right-of-way or easement accepted for maintenance by a government agency.

c. *Clean Up Requirements:* When sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area.

Street washing shall be allowed only after sediment is removed in this manner.

d. *Cost of Clean-up by City:* If the City must clean-up off-site sedimentation or mitigate other erosion related public safety and environmental hazards, the person in violation will be charged for the cost of the cleanup in addition to the civil penalty. The cleanup cost shall include personnel wages, equipment usage, and related administrative overhead costs. If the violator does not pay for the cleanup cost, revoked permits shall not be re-issued. Additionally, the City shall proceed in accordance with the enforcement provisions of this section to collect the cost of the clean up.

e. *Restoration of Land and Waters:* The City may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by NCGS 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil penalty or equitable relief.

f. *Additional Measures:* Whenever the City determines that significant erosion and sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

**(f) Post-Construction Stormwater Control**

(1) *Standards for Stormwater Quantity Control:* All development and redevelopment to which this subsection applies shall comply with the standards herein. The design of facilities to comply with these standards shall be based on procedures contained in the Stormwater BMP Manual or as approved by the Stormwater Administrator guided by the spirit, purpose and intent of this section. The minimum "post-construction" stormwater control requirements included in the Stormwater Management Plan shall provide management measures necessary to accomplish the following:

a. Limit the two-year and ten-year developed peak discharge rates to pre-developed peak discharge rates using a duration of 24-hours with a SCS Type II design storm and pass the 50-year, 24-hour storm event. The Stormwater Administrator may require control to pre-development rates for the 25-year, 24-hour storm, if by using existing watershed master plan analysis it is found that that additional flow reduction is required to protect downstream properties, natural and built drainage facilities due to the additional peak flows from the 25-year 24-hour storm event.

b. Provide extended detention for the difference between the pre-development and post development volume of the 2-year-24-hour SCS Type II design storm. The increase in runoff volume must be detained between 24-hours to 72-hours. Provided that the Stormwater Administrator may require volume control for the difference between the pre-development and post development volume of the 25-year 24 hour storm if by using existing watershed master plan analysis it is found that that additional volume reduction is required to protect downstream properties, natural and built drainage facilities due to the additional run-off volumes from the 25-year 24 hour storm event.

(2) *Standards for Stormwater Quality Control:* All development and redevelopment to which this subsection applies shall comply with the standards herein. The design of facilities to accomplish these standards shall be based on procedures contained in the Stormwater BMP

Manual or approved by the Stormwater Administrator. The minimum "post-construction" stormwater control requirements included in the Stormwater Management Plan shall provide management measures necessary to accomplish the following:

- a. Control and treat the stormwater run-off leaving the site from the first one inch of rain. The volume of run-off from the first inch of rain must be detained between 48-hours to 120-hours.
- b. All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of eighty-five percent (85%) average annual removal for Total Suspended Solids.
- c. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H.1008(c)
- d. If the developer utilizes stormwater sheetflow measures across aquatic buffers, filtration, bioretention, enhanced on-site infiltration, and/or other effective measures thereby managing both the stormwater quantity and quality, the Post-Construction Stormwater Control standards described in subsection 7-12-2(f)(1) and (2) above shall be altered or waived by the Stormwater Administrator to the extent that the measures provide the same level of treatment, discharge, and velocity control as would be accomplished under the Post-Construction Stormwater Control standards using the methods defined in the BMP Manual.

(3) Aquatic Buffers: Post construction.

1. Aquatic Buffer: A thirty (30) foot aquatic buffer shall be required along perennial and intermittent waterbodies. Landowners may challenge the classification of a stream (i.e. perennial, intermittent, ephemeral) using the methods for delineating waters developed by the North Carolina Division of Water Quality. Property owners are responsible for the cost of having the necessary field investigations performed by competent persons. By approval of this ordinance, the North Carolina Division of Water Quality hereby authorize appropriately trained City staff to make a field determination of the stream classification.

2. Reduction of Excess Aquatic Buffer: Property owners may petition the Stormwater Administrator for reduction of the portion of any Aquatic Buffer that exceeds State minimum requirements if the property owner agrees to establish and maintain:

- a) vegetation within the aquatic buffer to meet standards set forth in the Best Management Practices Manual or approved by the Stormwater Administrator as being in accord with such manual, and
- b) a level-spreader outside of the aquatic buffer ensuring sheet flow entering the buffer or undertakes other mitigating stormwater management measures approved by the Stormwater Administrator as acceptable under industry standards.

3. Buffer Width: The width of the aquatic buffer is measured horizontally from the top of bank to the landward side of the watercourse. (i.e. moving perpendicularly away from the water toward uplands or disturbed areas).

**Deleted: Post-Construction**

**Deleted:** With the exception of those activities exempted from post construction stormwater control regulations as set forth in subsection 7-12-2(a)(7)b of this section, aquatic buffers along perennial and intermittent waterbodies shall be required as set forth in the table in subsection 7-12-2(e)(2)b.1.

4. Substantial Improvements: For substantial improvements on parcels that have previously been developed, the aquatic buffer must be restored by removing built-upon areas from the aquatic buffer and by planting and landscaping the aquatic buffer per landscape requirements as set forth in the UDO where practicable. If complete restoration of the aquatic buffer is not practicable, other mitigating stormwater management measures that enhance the function of the available buffer or otherwise substantially replace the function of the aquatic buffer may be used for compliance with this section, as approved by the Stormwater Administrator.

(4) Additional Standards for Special Situations:

a. *Trout Waters:* In addition to the standards for stormwater handling set out in the Stormwater BMP Manual, development and redevelopment that drains in whole or in part to trout waters shall design and implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature and allow on-site stormwater treatment devices such as infiltration areas, bio-retention areas, and level spreaders as added controls, while meeting the other requirements of this section.

b. *Watershed Overlay Zones:* In addition to the standards for stormwater handling set out in the stormwater BMP Manual, development and redevelopment that is in whole or in part within a Watershed Overlay Zone shall implement additional measures determined by the Stormwater Administrator to be required to bring the City of Asheville into compliance or to maintain compliance with provisions of the City's NPDES Stormwater Discharge Permit, a Total Maximum Daily Load (TMDL) once approved by the State of North Carolina or the U.S. Environmental Protection Agency for one or more pollutants, a consent decree or other order issued under the provisions of the Clean Water Act (33 USC 1251 et seq.) or other federal or state law or regulation.

(5) On-Site Waste Water:

a. *Operation and Maintenance Requirements:* New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance must be approved and permitted by the Buncombe County Health Department. Both the Buncombe County septic permit and documentation showing the operation and maintenance for the system are required before a permit may be issued.

b. *Standards for Operation and Maintenance:* Onsite systems for domestic wastewater covered by this section shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the seepage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

(6) Standards for Stormwater Control Measures:

a. *Stormwater BMP Manual:* To assist in the design and evaluation of stormwater management facilities in the City, the Stormwater Administrator shall prepare and adopt a Stormwater BMP Manual. The Stormwater BMP Manual shall contain recommended design procedures and criteria presented for conducting evaluations of practices. The intention of the Stormwater BMP Manual is to establish uniform design practices; it neither replaces the

need for engineering judgment nor precludes the use of information not presented. Other accepted engineering procedures may be used to evaluate practices if approved by the Stormwater Administrator.

1. If the specifications or guidelines of the Stormwater BMP Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Stormwater BMP Manual.
2. If the standards, specifications, guidelines, policies, criteria, or other information in the Stormwater BMP Manual are amended subsequent to the submittal of an application for approval pursuant to this section but prior to approval, the old information shall control and shall be utilized in reviewing the application and in implementing this section with regard to the application.
3. The Stormwater BMP Manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

*b. Evaluation According to Contents of the Stormwater BMP Manual:* All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this section shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Stormwater BMP Manual. The Stormwater Administrator shall determine whether they will be adequate to meet the requirements of this section.

*c. Determination of Adequacy; Presumptions and Alternatives:* Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the Stormwater BMP Manual will be presumed to meet the minimum water quality and quantity performance standards of this section. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Stormwater BMP Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this section. The Stormwater Administrator may require the applicant to provide such documentation, calculations, and examples as necessary to determine whether such an affirmative showing is made.

**(7) Locations and Dedication of BMPs, Facilities and Improvements:**

a. Upon review and recommendation of the Stormwater Administrator and the Director of Public Works, City Council may approve BMPs being located within the City's public right-of-ways. In determining whether to allow a BMP within a City public right-of-way, the factors to consider shall consist of but not be limited to, whether the BMP is a public benefit, the annual cost to the City to maintain the BMP, the potential liability the BMP exposes to the City, and any other related factors.

b. The City may accept dedication, subject to final approval from City Council, of any existing or future BMPs and stormwater management facilities for maintenance, provided such facility meets all the requirements of this section and any other policies of the City and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance. The City may require as a condition of public

acceptance, that the owner arrange for funding costs associated with future maintenance of the BMP or stormwater management facility. Nothing herein shall require the City to accept maintenance of any BMP or stormwater management facility.

(8) Operation and Maintenance of Structural BMPs:

a. *Operation and Maintenance Agreement:* The applicant or owner of a site that is required to have a structural BMP pursuant to this section must execute an operation and maintenance agreement prior to issuance of a certificate of occupancy for development or redevelopment. The form "Operation and Maintenance Agreement," shall be provided by the office of the Stormwater Administrator.

b. *Content of Operation and Maintenance Agreement:* The operation and maintenance agreement shall require the property owner(s) to maintain, repair, and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP, and the right of the City to abate a violation. Additionally, it shall grant the City a right of entry in the event the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP. In no case, however, shall the right of entry confer an obligation on the City to assume responsibility for the structural BMP. Additionally, the agreement shall include language to bind the parties thereto and all subsequent owners, successors and assigns, of the site, portions of the site, and lots or parcels served by the structural BMP.

c. *Maintenance Responsibility:* The final responsibility for complying with the operation and maintenance agreement provided herein remains with the property owner.

d. *Failure to Maintain:* If the owner fails to maintain the structural BMP in accordance with the operation and maintenance agreement, the City shall proceed in accordance with subsection 7-12-2(i). Any costs incurred by the City to abate such failure shall be recovered by the City at 120% of the actual cost.

e. *Recordation:* The operation and maintenance agreement shall be referenced on the final plat; and if there is no final plat, then the agreement shall be referenced on an as-built record drawing and also recorded in the Buncombe County Register of Deeds Office, so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles, at the expense of the owner/applicant prior to the issuance of the Certificate of Occupancy.

f. *Deed Restrictions and Protective Covenants:* Upon conveyance of real property that is subject to or should be subject to a recorded operation and maintenance agreement, the property owner shall include in the deed of conveyance, deed restrictions, and protective covenants, imposing upon the new owner the responsibility for maintenance of the structural BMPs. Failure to know of the existence of structural BMPs on property prior to purchase is not an excuse from the obligation to maintain the structural BMPs. A failure to include deed restrictions and protective covenants as required by this subsection constitutes negligence per se.

(g) Inspections and Investigations

(1) City Inspections:



a. *Inspections:* The City shall perform routine, random, complaint based, systematic inspections or a combination hereof to ensure continued compliance with the requirements of this section. The City may also conduct joint inspections with other agencies inspecting under environmental or safety laws during or post construction. Notice of the right to inspect shall be included in the approval of each permit application.

b. *Purpose of Inspections:* Inspections may include, but are not limited to, compliance checks of the approved plan and the grading and stormwater permit, reviewing for compliance with the standards of the Stormwater BMP Manual, reviewing land disturbing activity and plan effectiveness, reviewing maintenance and repair records, sampling discharges, surface water, groundwater, and material or water in BMPs, and evaluating the condition of BMPs.

(2) *City Investigations:* The City shall have the power to conduct an investigation as it may reasonably deem necessary to carry out its duties as prescribed in this section and, for this purpose, to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any activity regulated in this section. No person shall refuse entry or access to any authorized representative or agent of the City, who requests such entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper, willfully resist, delay or interfere with any such representative while in the process of carrying out his/her official duties.

(3) *Administrative Inspection Warrant:* If the owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative inspection warrant pursuant to NCGS 15-27.2. No person shall obstruct, hamper or interfere with the office of the Stormwater Administrator while carrying out the official duties of this section.

(4) *Written Statements/Filing of Reports:* The City shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to activity under this section.

(5) *Private Inspections During Construction:*

a. *Contract Inspections:* A contract is required between the person financially responsible and a licensed professional for all initial inspections required by subsection 7-12-2(g)5.d.2. below.

b. *Contract Requirements:* The contract required by subsection a. above shall at a minimum provide that the licensed professional will be available for the duration of the construction of the project in order to design new stormwater measures and/or more effective or different erosion sedimentation control measures in the event that the initial controls are ineffective and provide effective and immediate alternatives for compliance with this section should a dispute arise between the parties.

c. *Exemptions:* The following lots or sites shall be exempt from the inspection requirements of this subsection:

1. Land disturbance of 25,000 square feet or less; provided however, steep slope lots with a perennial or intermittent stream located within 100 feet downhill of land

disturbance are limited to the percentage of disturbed area on the lot as shown in the table of allowable disturbances set forth in section 7-12-4 of the Steep Slope Regulations of the UDO.

2. For steep slope areas as set forth under section 7-12-4 of the Steep Slope Regulations of the UDO, only those disturbances that fall within the table of allowable disturbances shall be exempt from the inspection requirement of this subsection.

3. Sites where land disturbance for construction of a single family home or comparable structure such as a duplex that disturbs less than 40% of the lot and retains, at a minimum, a 30 foot aquatic buffer. Conveyance channels in the buffer area shall be protected in accordance with the field manual of the N.C. Department of Natural Resources.

d. *Inspection Requirements:*

1. *Certificate of Inspection Agreement:* A notarized certificate of inspection agreement on a form available from the office of the Stormwater Administrator stating the existence of the contract required hereinabove must be received and approved by the Stormwater Administrator before a grading and stormwater permit is issued. All stormwater management facilities and BMPs must be inspected.

2. *Initial Inspection:* A licensed North Carolina registered professional such as an engineer or landscape architect must perform all initial inspections and must sign the initial inspection report. Initial inspections shall be conducted for the purpose of ensuring that installations required by the approved plan are in place and have been installed consistent with the approved plan. An initial inspection shall be performed as many times as necessary for the licensed registered professional to render a professional opinion as to whether the measures installed on site have been properly installed and are substantially sufficient to comply with the control regulations of this section.

3. *Weekly Inspections:* A North Carolina registered professional engineer, landscape architect or an inspector holding certification from an erosion and sediment control inspection program acceptable to the Stormwater Administrator shall conduct weekly inspections for lots where steep slope and/or ridgetop protection regulations apply.

4. *Bi-Weekly Inspections:* A North Carolina registered professional engineer, landscape architect or an inspector holding certification from an erosion and sediment control inspection program acceptable to the Stormwater Administrator shall conduct bi-weekly inspections on all non-exempt sites of land disturbing activity after the initial inspection.

5. *Additional Inspections:* If a determination is made by the office of the Stormwater Administrator that a site continues to violate the provisions of this section, meaning that the site has been issued a written notice of violation three or more times in a six month time frame, the Stormwater Administrator shall require that all inspections, whether weekly or bi-weekly, be performed by a professional engineer or landscape architect only.

6. *Inspection Filings:* The initial and signed inspection report must be filed with the Stormwater Administrator prior to the commencement of any land disturbing activity. All

weekly inspections and bi-weekly inspections must be kept on inspection logs and retained at the site.

7. *Inspection Violations:* It shall constitute a violation of this section if inspection logs are not on site or made available to City inspectors upon request.

e. *Falsification of Reports.* Falsification of reports shall constitute a violation of this section.

f. *Forms.* Standardized Certificate of Inspection Agreements, reporting forms and reporting process are available upon request from the office of the Stormwater Administrator.

**(6) Private Inspections Post-Construction:**

a. *Due Diligence:* The owner of each structural BMP installed pursuant to this section shall continuously perform due diligence inspections to ensure that the structural BMP is continuing to function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.

b. *Annual Maintenance Inspection and Report by Owner:* The owner of any structural BMP installed pursuant to this section shall annually submit to the Stormwater Administrator an inspection report from a qualified registered North Carolina professional engineer or landscape architect performing services only in their area of competence. The inspection report shall contain all of the following:

1. The name and address of the property owner;
2. The recorded book and page number of the lot of each structural BMP;
3. A statement that an inspection was made of all structural BMPs;
4. The date the inspection was made;
5. A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this section; and
6. The original signature and seal of the engineer or landscape architect.

(7) *Records of Installation and Maintenance Activities:* The owner of each structural BMP shall keep records of inspection, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

**(h) Violations and Notices**

(1) *General Violations:* Among other violations not specifically set forth herein, it shall constitute a violation of this section for any person to fail to comply with an approved plan, the grading and stormwater permit, applicable requirements including the failure to provide ground cover, standards, or limitations imposed by this section, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this section; to engage in land disturbing activity without the required approved plan and permit

and to falsify reports required under this section. Each day a violation continues shall constitute a separate and distinct violation.

(2) Immediate Violations: It shall constitute an immediate violation of this section if through inspection the office of the Stormwater Administrator determines that an immediate civil penalty is warranted based upon the table of penalties set forth hereinafter.

(3) Notice of Violation: If through inspection, it is determined that a person has violated this section, the office of the Stormwater Administrator shall immediately serve a notice of violation upon that person. The notice may be served by any means authorized under Rule 4 of the N.C. Rules of Civil Procedure. The Notice of Violation shall be served upon the financially responsible party. If the financially responsible party is not the property owner, the notice shall also be served upon the property owner and contain the following:

a. The measures needed to comply, the time within such measures must be completed and warn that failure to correct the violation within the time period shall subject the violator to civil and/or other enforcement action.

b. In determining the measures required and the time allowed for compliance, the office of the Stormwater Administrator shall take into consideration the economic feasibility, technology, the quantity of work required, and shall set reasonable and attainable time limits of compliance.

(4) Notice of Compliance: Once the violation has been cured, the development, redevelopment and land disturbing activity is in compliance and any penalties assessed have been paid in full or the penalty appeal has been filed within the given time frame; a notice of compliance shall be sent to the financially responsible party.

#### (i) Enforcement

(1) Civil Penalty for Soil Erosion and Sedimentation Violations: Any person who violates any of the provisions of the soil erosion and sedimentation control requirements of this section and/or who initiates a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty and in some cases, as set forth in the table of penalties below, an immediate civil penalty. The maximum civil penalty for a violation is five thousand dollars (\$5,000). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

(2) Civil Penalty for Stormwater Control, Illicit Discharge and Connection Violations: Any person who violates the stormwater control, illicit discharge and connection regulations of this section shall be subject to a civil penalty and in some cases, as set forth in the table of penalties below, an immediate civil penalty. The maximum civil penalty for a violation is twenty-five thousand dollars (\$25,000); however, for a continuing violation the maximum per day per violation penalty shall be ten thousand dollars (\$10,000), unless a civil penalty has been imposed against the violator within the five years preceding the current violation. A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.

(3) Civil Penalty Assessment: Upon the failure to comply within the time frame set forth in the notice of violation, the Stormwater Administrator shall give notice of assessment of a civil

penalty by providing notice of the civil penalty amount and the basis for assessment to the person assessed. Provided however, the assessment of an immediate civil penalty shall be deemed compliant with the requirement for prior service of a notice of violation if served simultaneously with the notice of violation. The assessment of a penalty and an immediate civil penalty shall be served personally or by any means authorized under Rule 4 of the N.C. Rules of Civil Procedure and shall direct the violator to either pay the assessment or contest the assessment in writing, within thirty (30) days after receipt of the notice of assessment. The office of the Stormwater Administrator shall initially assess the civil penalty. In determining the amount of the civil penalty to assess, personnel of the office of the Stormwater Administrator shall be guided strictly by the table of penalties as set forth herein.

Table of Penalties											Deleted: zone
Erosion and Sediment Control											
	Grading without permit	Site/Plan not in accordance with approved plan	Failure to maintain erosion control measures	Offsite Sedimentation (includes deposition into a stream)	Buffer violation	Graded slopes or fills not in compliance	Lack of ground cover	Improper fill material	Failure to file/falsification of inspection report	Other violations of Erosion and Sediment Laws	
Immediate Fine	\$100 per 2,000 SF disturbed max of \$5,000 NOV Issued	NOV Issued	NOV Issued	Slight - \$0 - \$500 Moderate \$501-\$2000 Severe \$2001-\$5000 NOV Issued	\$100 plus \$2 per square foot disturbed, max of \$5,000, NOV Issued	NOV Issued	NOV Issued	NOV Issued	\$2000 for falsification of report	Possible \$0-\$5000	
On-Going Violation (Failure to Comply with NOV)	Per day penalty equal to or greater than Immediate penalty	\$500 per measure not installed correctly or \$1000 per measure not installed, max of \$5000 (every 100 L.F. of silt fence or diversion shall be counted as 1 measure)	\$500 per measure not maintained correctly, max of \$5000 (every 100 L.F. of silt fence or diversion shall be counted as 1 measure) or \$500 plus \$500 times the disturbed drainage acreage to the failed measure, whichever is greater	Per day penalty equal to or greater than Immediate penalty	Per day penalty equal to or greater than Immediate penalty Failure to take Immediate short-term measures and restore buffers to standards result in subsequent violations)	\$100 per 100 SF not compliant max of \$5,000	\$100 per 100 SF not compliant max of \$5,000	\$0-\$5000 (To be based on amount of Improper fill and possible hazard for failure or leeching of pollutants)	\$200 per reporting period for each report not filed	Possible \$0-\$5000	

a. **Guidelines for Penalty Assessment:** Upon appeal of the civil penalty assessment to the Stormwater Administrator, the Stormwater Administrator shall be guided by the following standards and guidelines in affirming in whole or in part, reversing in whole or in part or modifying the penalty imposed:

1. **Soil Erosion and Sedimentation Penalty:**

- a) The severity of the violation: whether slight, moderate or severe;
- b) The degree and harm caused by the violation along with the type of violation;
- c) The duration, cause, extent of any off-site damage which may have resulted;

- d) The effectiveness of action taken by the violator and adherence to the approved plan;
- e) The cost of rectifying any damage, the amount of money the violator saved by noncompliance and the estimated cost of installing and/or maintaining corrective sediment control measures and staff investigative costs;
- f) Whether the violation was committed willfully and the prior record of the violator in complying or failing to comply with referenced subsection.

2. *Stormwater Control, Illicit Discharge and Connection Penalty:*

- a) The degree and extent of harm to the natural resources and/or public roadways of the City;
- b) The degree and extent of harm to the public health, or to private property resulting from the violation;
- c) The duration and gravity of the violation;
- d) The effect on ground or surface water quantity/quality or on air quality;
- e) The cost of rectifying the damage;
- f) The amount of money the violator saved by noncompliance;
- g) Whether the violation was committed willfully;
- h) The prior record of the violator in complying or failing to comply with referenced subsection.

(4) *Criminal Penalties.* A violation of this section subjects the offender to a civil penalty pursuant to the authority granted by NCGS 160A-175 and does not subject the offender to the criminal penalty provisions of NCGS 14-4 and Section 1-5 of Chapter 1 of the Code of Ordinances of the City of Asheville.

(5) *Stop Inspections Order.* A Stop Inspection Order may be issued for a site by the office of the Stormwater Administrator with all inspection approvals for and all other permitted activity suspended if the site is not brought into compliance within the time period for cure as set forth in the Notice of Violation issued under this section. A copy of the Notice shall be sent to the office of the Director of Building Safety and upon receipt, a Stop Inspection Order shall be issued from said office. Once the violation has been brought into compliance, a notice shall be sent to the office of the Director of Building Safety and the Stop Inspection Order shall be removed.

(6) *Suspension.* The Stormwater Administrator may suspend any grading and/or stormwater permit for any violation of the provisions of this section if the site is not brought into compliance within the time period for cure as set forth in the Notice of Violation. To suspend a grading and/or stormwater permit, the Stormwater Administrator shall serve a Notice of Continuing Violation and Permit Suspension which shall comply with the notice of violation requirements of subsection 7-12-2(h)(3), upon the financially responsible party. The notice may be served by

any means authorized under Rule 4 of the NC Rules of Civil Procedure. Once the violation has been cured and all penalties have been paid in full or penalty appeal has been filed within the given time frame, the suspension shall be lifted and notice of such shall be sent to the financially responsible party.

(7) Revocation: The Stormwater Administrator may revoke any grading and/or stormwater permit if the site is not brought into compliance within the time period for cure as set forth in the Notice of Continuing Violation and Permit Suspension. A Notice of Permit Revocation shall comply with the notice of violation requirements of subsection 7-12-2(h)(3). The notice may be served by any means authorized under Rule 4 of the NC Rules of Civil Procedure. A new permit application and approved plan including all permit fees must be submitted prior to reinstatement of the revoked permits. For permit reinstatement, the site must be deemed to be in compliance with the requirements of this section and all penalties have been paid in full or penalty appeal has been filed within the given time frame.

(8) Stop Work Order: If, through inspection, it is determined that a land-disturbing activity is being conducted in violation of this section or of any rule adopted or order issued pursuant to this section, and that the violation is knowing and willful, and that either: (a) off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent; or (b) off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent; or (c) the land-disturbing activity is being conducted without an approved plan, the Stormwater Administrator, upon compliance with all of the procedural requirements of NCGS 113A-65.1, may issue a Stop Work Order, the duration of which is not to exceed five days. The Stop Work Order shall be served by the sheriff of Buncombe County or some other person duly authorized by law to serve process as provided by Rule 4 of the NC Rules of Civil Procedure.

(9) Summary Abatement: If through inspection, the Stormwater Administrator determines that a violation occurring under this section represents an imminent threat to life or property, the Stormwater Administrator shall take such action as may be necessary to protect the public and correct the violation.

(10) Abatement: If an order directing the correction of a violation representing a threat to life or property is not complied with within the applicable period of time, the City may, after notice to the owner, enter the land and perform all necessary work to abate the threat to life or property. Notice shall be in writing and shall be delivered to the financially responsible party by hand delivery; by certified mail, return receipt requested; or by any other means allowed by Rule 4 of the N.C. Rules of Civil Procedure.

(11) Cost of Abatement Lien Against Property: The City may assess the owner of the subject property with the cost of any work performed by the City pursuant to an abatement, which cost shall be a lien on such property and may be collected as provided in NCGS 160A-193. Notice shall be provided five days prior to entry and performance of necessary work by the City. For stormwater management facilities, the owners of all property served by the facility shall be jointly and severally responsible to the City for the maintenance of the facility and liable for any costs incurred by the City. All such properties are jointly and severally subject to the imposition of liens for said costs.

(12) Action for Failure to Comply and Failure to Pay Civil Penalty: If violations are not cured or corrected within the time specified in the Notice of Violation and/or the violator fails to give timely notice of appeal or fails to pay the civil penalty assessed within the prescribed time

period, then the matter may be referred to the City's debt set-off program and/or referred to the City Attorney for institution of a civil action in the name of the City in a court of competent jurisdiction. In addition to, or in lieu of, the other remedies set forth in this section, the City Attorney may institute an injunctive action, mandamus action, or other appropriate proceeding. Upon determining that an alleged violation is occurring or is threatened, a court hearing an appeal for relief shall enter such orders and/or judgments as are necessary to abate or prevent the violation. The institution of an action for injunctive or other relief under this section shall not relieve any party to such proceeding from any civil penalty prescribed by this section for violations of this section.

**(j) Variances, Exceptions and Appeals:**

(1) Variances: Any aggrieved person may petition for a variance to the Board of Adjustment to use one's land in a manner otherwise prohibited by this section. Variances may also be requested from the aquatic buffer requirements, deed restrictions and protective covenants required herein. Reasonable and appropriate conditions and safeguards may be imposed on any variance granted. Merely providing that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. All of the procedural requirements of the entity charged with granting a variance shall be met by the applicant. Provided however, only the NCDENR-Division of Land Resources may grant a variance or exception as herein below set forth, to aquatic buffers along designated trout streams. The Stormwater Administrator may support an applicant's appeal for a variance if the applicant's application satisfies all of the following criteria:

- a. Unnecessary hardships would result from strict application of this section.
- b. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- c. The hardships did not result from actions taken by the applicant.
- d. The requested variance is consistent with the spirit, purpose, and intent of this section; will protect water quality; will secure public safety and welfare; and will preserve substantial justice.

(2) Exceptions: The Stormwater Administrator may approve plans that do not comply with the mandatory standards of subsection 7-12-2(e)(2) of this section if the land disturbing activity is for the construction of facilities to be located on, over, or under a lake or natural water course or work done for the purposes of creating trails, walkways, river access areas, and similar facilities along the rivers, creeks or streams. Where one or more measures required under subsection 7-12-2(e)(2) are not practicable, the Stormwater Administrator may approve plans provided that additional measures are installed that provide the same level of treatment, discharge and velocity control.

a. Required Exceptions: Notwithstanding the variance allowance herein, the Stormwater Administrator shall grant an exception from the aquatic buffer requirements, deed restrictions and protective covenants in any of the following instances:

1. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide pollutant removal, protect against



erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of the BMPs.

2. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located designed, constructed, and maintained to minimize disturbance, provide pollutant removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

3. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

b. Limitation of Aquatic Buffer with a Granted Exception: Where a temporary and minimal disturbance has been permitted as an exception to the aquatic buffer, to the extent practicable, land-disturbing activities in the aquatic buffer, shall be limited to a maximum of ten percent (10%) of the total length of the aquatic buffer, within the site to be disturbed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of aquatic buffer.

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(3) Appeals: Any aggrieved party may file an appeal for or from the issuance of a variance, or from the denial/grant of an exception, penalty assessment, notice of violation, permit disapproval/modification, order, requirement, determination or interpretation rendered under the provisions of this section. The appeals process shall be as follows:

a. To the Stormwater Administrator: With the exception of appealing for the issuance of a variance, all appeals must initially be heard by the Stormwater Administrator. The appeal must be submitted in writing within 30 days of receipt of an adverse action (for the disapproval or modification of a permit application for failing to meet the Erosion Prevention and Sediment Control provisions of this section, the appeal must be submitted within 15 days) and shall specify the specific grounds for relief and what relief is requested. The Stormwater Administrator shall render a decision no later than 30 days from receipt of the written appeal. Further appeal may be taken to the Soil Erosion/Stormwater Review Committee as established herein, within 30 days from the date of receipt of the decision of the Stormwater Administrator.

b. To the Soil Erosion/Stormwater Review Committee: A Soil Erosion/Stormwater Review Committee (Committee) is hereby created for the purpose of hearing appeals taken from the Stormwater Administrator. The Committee shall be composed of five (5) members as follows: two City Department Directors designated by the City Manager, one member of the Planning and Zoning Commission, and two members appointed by the Asheville City Council, one a resident of the City of Asheville and the other from either the City of Asheville or the extra-territorial jurisdiction (ETJ) of the City, at least one of whom shall have a professional accreditation in the practice of stormwater management, erosion and sediment control, or related areas of professional practice. A simple majority of the appointed members shall constitute a quorum. The Committee

shall hold an organizational meeting within a reasonable period of time after adoption of this section to appoint a Chair and adopt Rules of Procedure to govern appeals as herein authorized. An appeal may be taken to the Committee within thirty (30) days of receipt of the written decision of the Stormwater Administrator. The appeal must be submitted in writing and shall specify why the Stormwater Administrator's decision is erroneous and what relief is requested. The Committee shall take reasonable steps to ensure that written decisions are rendered within a reasonable period of time after the hearing.

c. *To the Asheville Board of Adjustment:* Further appeal may be taken to the Asheville Board of Adjustment in accordance with and pursuant to the written requirements of the Board and section 7-6-2 of the UDO. Provided however, appeals regarding disapproval or modification of a permit application based upon failing to meet the erosion prevention and sediment control provision of this section, may not be taken to the Asheville Board of Adjustment and, if an appeal is desired, such appeal may be taken from inception, directly to the North Carolina Sedimentation Commission pursuant to NCGS 113A-61(c) and Title 15A, NCAC 4B.0118(d).

d. *To the Buncombe County Superior Court:* Every decision of the Board shall be subject to review by the Superior Court by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in the office of the Board or after a written copy thereof is delivered to every person who has filed a written request for such copy with the Board at the time of its hearing of the case, whichever is later. The appeal shall be limited to the record before the Board.

**(k) Prohibition, Detection and Elimination of Illicit Connections, Illicit Discharges and Improper Disposal to the Stormwater System**

(1) *Connections:* It is unlawful for any person to connect any pipe, open channel, or any other conveyance system that discharges anything except stormwater or unpolluted water, into the City's MS4 or receiving waters. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic tanks.

(2) *Continuation of Illicit Connection:* It is unlawful for any person to continue the operation of any such illicit connection regardless of whether the connection was permissible when constructed. Improper connections in violation of this section must be disconnected and redirected.

(3) *Illicit Discharge:* It is unlawful for any person to throw, drain, run or otherwise discharge to any component of the City's MS4 or to the waters of the State of North Carolina or to cause, permit or allow to suffer to be thrown, drained, run, or allowed to seep or otherwise discharge into such system or receiving water all matter of any nature excepting only such storm or surface water as herein authorized.

(4) *Exemptions:*

a. The following activities are hereby deemed not to be a significant source of pollution and are hereby exempted from the prohibition provision above:

discharges pursuant to an NPDES discharge permit (other than the NPDES permit for the City of Asheville MS4) provided that such discharges to the MS4 have been authorized by the Stormwater Administrator;

discharges or flows resulting from fire fighting activities;

water line flushing performed or required by a government agency;

diverted stream flows, rising groundwaters, unpolluted pumped ground waters and unpolluted ground water infiltration as defined at 40 CFR 35.2005(20);

discharges from potable water sources, foundation drains, air conditioning condensation, springs, water from crawl space pumps, footing drains, lawn watering, individual and charity car washing, dechlorinated swimming pool discharges, flows from riparian habitats and wetlands;

discharges of irrigation waters (does not include reclaimed water as described in 15A NCAC 2H. 0200); and/or

discharges from flushing and cleaning stormwater conveyances with dechlorinated, uncontaminated water.

b. Provided however, the Stormwater Administrator retains the right to determine in writing that any exempted discharge as set forth above from any property, is no longer exempt if there is evidence of significant pollution from such discharge.

(5) Accidental Discharge: In the event of an accidental discharge or an unavoidable loss to the City MS4 of any pollutant, the person concerned shall inform the City as soon as possible, but not to exceed 24 hours, of the nature, quantity and time of occurrence of the discharge. The person concerned shall take immediate steps to contain the waste, treat the waste or other actions to minimize affects of the discharge on the MS4 and receiving waters. The person shall also take immediate steps to ensure no recurrence of the discharge.

(6) Detection and Elimination of Illicit Connections, Illicit Discharges and Improper Disposal to the Stormwater System:

a. The Stormwater Administrator shall take appropriate steps to detect and eliminate illicit connections to the City of Asheville MS4, including the adoption of a program to screen illicit discharges and identify their source or sources.

b. The Stormwater Administrator shall take appropriate steps to detect and eliminate improper discharges, including a program to screen for disposal and programs to provide for public education, public information, and other appropriate activities to facilitate the proper management and disposal of used oil, toxic materials and household hazardous waste.

c. Where such connections exist in violation of this section and said connections were made prior to adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this section. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other

discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

d. Where it is determined that said connection:

1. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
2. Was made in violation of any applicable regulation or ordinance, other than this section; the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration: the quantity and complexity of the work; the consequence of delay; the potential harm to the environment, to the public health, and to public and private property; and the cost of remedying the damage.

(7) Spills: Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their pre-existing condition.

(8) Notification of Discharge: Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the fire chief of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by state or other law.

(9) Nuisance: Illicit discharges and illicit connections which exist within the City's jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or safety and are found, deemed, and declared to be public nuisances and shall be abated.

(10) Monitoring and Inspections Related to Illicit Discharge Program:

a. Water Quality Monitoring: The Stormwater Administrator shall monitor the quantity of, and the concentration of pollutants in stormwater discharges from the areas and/or locations designated in the City of Asheville SWMP.

b. General Inspection Requirements: The Stormwater Administrator, bearing proper credentials and identification, may enter and inspect after duly notifying the owner of said property or the representative on site, all properties for regular inspections, periodic investigations, monitoring, observation measurement, enforcement, sampling and testing, to effectuate the provisions of this section at reasonable times. The Stormwater Administrator shall maintain inspection reports in a permanent file located in the office of the Stormwater Administrator.

c. Administrative Inspection Warrant: Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or confine the inspection to areas concerning which no objection is raised. The inspector shall immediately report the refusal and the grounds to the Stormwater Administrator. The

Stormwater Administrator shall promptly seek an administrative inspection warrant consistent with the laws of the State of North Carolina to complete the inspection.

d. *Emergency Inspections:* In the event that the Stormwater Administrator reasonably believes that discharge from the property into the City's MS4 may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon reasonable request by the owner or representative.

#### **(I) Acronyms**

(1) BMP	Best management practice
(2) CFR	Code of Federal Regulations
(3) CWA	Clean Water Act
(4) DLR	Division of Land Resources
(5) DWQ	Division of Water Quality
(6) MEP	Maximum extent practicable
(7) MS4	Municipal separate storm sewer system
(8) NCAC	North Carolina Administrative Code
(9) NCDENR	North Carolina Department of Environment and Natural Resources
(10) NCEMC	North Carolina Environmental Management Commission
(11) NCEPA	North Carolina Environmental Policy Act
(12) NCGS	North Carolina General Statutes
(13) NPDES	National Pollutant Discharge Elimination System
(14) SWMP	Stormwater Management Program
(15) TMDL	Total Maximum Daily Load
(16) USDA	United States Department of Agriculture
(17) USGS	United States Geological Survey

**Section 2 :** *More restrictive rules shall apply.* This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.

**Section 3:** *Severability.* The provisions of this ordinance are declared to be severable, and if any article, section, sentence, clause, or phrase of this ordinance shall for any reason be held invalid or unconstitutional, or if the application of this ordinance to any person or circumstances is held invalid or unconstitutional, such decisions shall not affect the validity of the remaining section, sentences, clauses, and phrases of this ordinance.

**Section 4:** *Invalidity.* That if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**Section 5:** *Conflict.* That all ordinances and clauses in conflict herewith be and are hereby repealed to the extent of such conflict.

**Section 6:** *Full force and effect.* The provisions of this ordinance shall be in full force and effect upon adoption. All development and redevelopment projects for which complete and full development applications were submitted prior to the effective date of this ordinance shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions including, but not limited to illicit discharge provisions.

Read, approved and adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Deleted: 09

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

Approved as to form:

\_\_\_\_\_  
City Attorney

## APPENDIX

TABLE OF USES FOR AQUATIC BUFFERS. The following table sets out the uses of areas designated as aquatic buffers and their designation as exempt, allowable with mitigation, or prohibited. In all cases the use is regulated by this ordinance only to the extent that it results in land disturbing activities or to an increase of impervious area within the aquatic buffer.

Deleted: zone

	Exempt from Buffer Requirements	Allowable with Mitigation	Prohibited
Airport facilities:			
• Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of aquatic buffer		X	
• Airport facilities that impact greater than 150 linear feet or one-third of an acre of aquatic buffer		X	
Archeological activities	X		
Bridges		X	
Dam maintenance activities	X		
Drainage ditches, roadside ditches and stormwater outfalls through aquatic buffers:			
• Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediments, pollutants and other pollution that convey to waterbodies	X		
• New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control pollutants and attenuate flow before the conveyance discharges through the aquatic buffer		X	
• New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for pollutants before discharges through the aquatic buffer			X

	Exempt from Buffer Requirements	Allowable with Mitigation	Prohibited
<ul style="list-style-type: none"> <li>Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch</li> </ul>			X
Discharge of a pond in a natural drainage way provided that a new aquatic buffer is established adjacent to the new pond	X		
Driveway crossings of streams and other surface waters subject to this Rule: <ul style="list-style-type: none"> <li>Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of aquatic buffer</li> <li>Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of aquatic buffer</li> <li>In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of aquatic buffer</li> <li>In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of aquatic buffer</li> </ul>	X	X  X  X	
Fences provided that disturbance is minimized and installation does not result in the removal of forest vegetation	X		
Fertilizer application: <ul style="list-style-type: none"> <li>One-time fertilizer application to establish replanted vegetation</li> <li>Ongoing fertilizer application</li> </ul>	X		X
Grading and re-vegetation in outer most one-third of the aquatic buffer area only provided that diffuse flow and the health of existing vegetation in inner most two-thirds is not compromised and disturbed areas are stabilized	X		



	Exempt from Buffer Requirements	Allowable with Mitigation	Prohibited
Greenways / hiking trails that do not increase impervious area within the aquatic buffer	X		
Greenways/hiking trails that increase impervious area within the aquatic buffer but which utilize BMPs or other measures to minimize water quality impacts		X	
Historic preservation	X		
Landfills as defined in G.S. 130A-290			X
Mining activities: <ul style="list-style-type: none"> <li>• Mining activities that are covered by the Mining Act provided that new aquatic buffers are established adjacent to the relocated channels</li> <li>• Mining activities that are not covered by the Mining Act OR where new aquatic buffers are not established adjacent to the relocated channels</li> <li>• Wastewater or mining dewatering wells with approved NPDES permit</li> </ul>	X	X  X	
Non-electric utility lines: <ul style="list-style-type: none"> <li>• Impacts other than perpendicular crossings in outer most one-third of the aquatic buffer only<sup>3</sup></li> <li>• Impacts other than perpendicular crossings in inner most two-thirds of the aquatic buffer<sup>3</sup></li> </ul>		X  X	
Non-electric utility line perpendicular crossing of streams and other surface waters: <ul style="list-style-type: none"> <li>• Perpendicular crossings that disturb equal to or less than 40 feet of aquatic buffer with a maintenance corridor equal to or less than 10 feet in width</li> </ul>	X		

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	Exempt from Buffer Requirements	Allowable with Mitigation	Prohibited
<ul style="list-style-type: none"> <li>Perpendicular crossings that disturb equal to or less than 40 feet of aquatic buffer with a maintenance corridor greater than 10 feet in width</li> <li>Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of aquatic buffer with a maintenance corridor equal to or less than 10 feet in width</li> <li>Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of aquatic buffer with a maintenance corridor greater than 10 feet in width</li> <li>Perpendicular crossings that disturb greater than 150 linear feet of aquatic buffer</li> </ul>		X    X	
On-site sanitary sewage systems – new ones that use ground absorption			X
Overhead electric utility lines <ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings in outer most one-third of the aquatic buffer only <sup>3</sup></li> <li>Impacts other than perpendicular crossings in inner most two-thirds of the aquatic buffer <sup>1,2,3</sup></li> </ul>		X  X	
Overhead electric utility line perpendicular crossings of streams and other surface waters: <ul style="list-style-type: none"> <li>Perpendicular crossings that disturb equal to or less than 150 linear feet of aquatic buffer<sup>3</sup></li> <li>Perpendicular crossings that disturb greater than 150 linear feet of aquatic buffer <sup>1,2</sup></li> </ul>	X	X	
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not		X	

practical			
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<sup>1</sup> Provided that, in inner most two-thirds of the aquatic buffer, all of the following BMPs for overhead utility lines are used.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measurements shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

<sup>2</sup> Provided that poles or towers shall not be installed within 10 feet of a water body unless approved by Stormwater Administrator based upon no practical alternative.

<sup>3</sup> Perpendicular crossings are those that intersect the surface water at an angle between 75° and 105°.

	Exempt from Buffer Requirements	Allowable with Mitigation	Prohibited
Playground equipment: <ul style="list-style-type: none"> <li>• Playground equipment on single family lots provided that installation and use does not result in removal of vegetation</li> <li>• Playground equipment installed on lands other than single-family lots or that requires removal of vegetation</li> </ul>	X	X	
Ponds in natural drainage ways, excluding dry ponds: <ul style="list-style-type: none"> <li>• New ponds provided that an aquatic buffer is established adjacent to the pond</li> <li>• New ponds where an aquatic buffer is NOT established adjacent to the pond</li> </ul>		X  X	

	Exempt from Buffer Requirements	Allowable with Mitigation	Prohibited
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the aquatic buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters		X	
Railroad crossings of streams and other surface waters: <ul style="list-style-type: none"> <li>• Railroad crossings that impact equal to or less than 40 linear feet of aquatic buffer</li> <li>• Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of aquatic buffer</li> <li>• Railroad crossings that impact greater than 150 linear feet or one-third of an acre of aquatic buffer</li> </ul>	X	X  X	
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X		
Road impacts other than crossings of streams and other surface waters		X	
Road crossings of streams and other surface waters: <ul style="list-style-type: none"> <li>• Road crossings that impact equal to or less than 40 linear feet of aquatic buffer</li> <li>• Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of aquatic buffer</li> <li>• Road crossings that impact greater than 150 linear feet or one-third of an acre of aquatic buffer</li> </ul>	X	X  X	
Scientific studies and stream gauging	X		



	Exempt from Buffer Requirements	Allowable with Mitigation	Prohibited
<ul style="list-style-type: none"> <li>In the aquatic buffer to control impacts associated with uses approved by the Stormwater Administrator or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer</li> <li>In-stream temporary erosion and sediment control measures for work within a stream channel</li> </ul>	X	X	
Underground electric utility lines: <ul style="list-style-type: none"> <li>Impacts other than perpendicular crossings in outermost one-third of the aquatic buffer only <sup>3</sup></li> <li>Impacts other than perpendicular crossings in the inner-most two-thirds of the aquatic buffer <sup>3,4</sup></li> </ul>	X	X	
Underground electric utility line perpendicular crossings of streams and other surface waters: <ul style="list-style-type: none"> <li>Perpendicular crossings that disturb less than or equal to 40 linear feet of aquatic buffer</li> <li>Perpendicular crossings that disturb greater than 40 linear feet of aquatic buffer</li> </ul>	X	X	

- <sup>4</sup> Provided that, in inner most two-thirds of the aquatic buffer, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Division.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
  - Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
  - Underground cables shall be installed by vibratory plow or trenching.
  - The trench shall be backfilled with the excavated soil material immediately following cable installation.
  - No fertilizer shall be used other than a one-time application to re-establish vegetation.
  - Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.

- Active measurements shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

	Exempt from Buffer Requirements	Allowable with Mitigation	Prohibited
<b>Vegetation management:</b> <ul style="list-style-type: none"> <li>• Emergency fire control measures provided that topography is restored</li> <li>• Periodic mowing and harvesting of plant products in the outer most one-third of the aquatic buffer only</li> <li>• Planting vegetation to enhance the aquatic buffer</li> <li>• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised</li> <li>• Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life</li> <li>• Removal of poison ivy</li> <li>• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998, Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, N.C. Guideline #30</li> </ul>	X  X  X X  X  X X		
Water dependent structures as defined in 15A NCAC 2B .0202		X	
<b>Water supply reservoirs:</b> <ul style="list-style-type: none"> <li>• New reservoirs provided that an aquatic buffer is established adjacent to the reservoir</li> <li>• New reservoirs where an aquatic buffer is NOT established adjacent to the reservoir</li> </ul>		X  X	
Water wells	X		
Wetland restoration	X		

b. *Aquatic Buffers Post-Construction:* For the permitting of land disturbing activities that are not exempt from the post construction stormwater control regulations, subsection 7-12-2(f)(3) of this section shall govern the aquatic buffer requirements. For the permitting of land disturbing activities that are exempt from post construction stormwater control regulations as set forth in subsection 7-12-2(a)(7)b of this section, post construction aquatic buffers are not required. For land disturbing activities post construction, the following provisions shall govern aquatic buffers:

*Undisturbed Aquatic Buffer Zone:* Aquatic buffers along perennial and intermittent waterbodies shall be required as set forth in the following table:

Table 1		Minimum Required Aquatic Buffer	
Disturbed Area or Cumulative Impervious Surface	Natural Slope of Developed Area	Perennial	Intermittent
		Waterbody	Waterbody
		(feet) <sup>a</sup>	(feet) <sup>a</sup>
<5000 sq. ft. (<~1/8 acre or <.115 of an acre)	<15%	15	8
	15% to 25%	15	8
	>25%	15	8
5000 sq ft to <10,000 sq. ft. (~1/8 acre to <~1/4 acre or .115 of an acre to <.23 of an acre)	<15%	15	8
	15% to 25%	20	10
	>25%	30	15
10,000 to <22,000 sq ft (~ a ¼ acre to <~12 acre or .23 acre to <.51 acre)	<15%	20	10
	15% to 25%	30	15
	>25%	40	20
22,000 up to <1 acre (~1/2 acre to <1.0 acre or .51 acre to <1.0 acre)	<15%	30	15
	15% to 25%	40	20
	>25%	50	25
1 acre or more	<15%	30	30
	15% to 25%	40	30
	>25%	50	30

Notes on Table 1:

a) Buffer width is to be measured from the water body's top of bank, landward.

b) Buffers along trout streams shall be regulated by NCDENR – Division of Land Resources.

c) Landowners may challenge the classification of a reach of the stream as intermittent or perennial using the methods for delineating intermittent and perennial waters developed by the North Carolina Division of Water Quality. Property owners are responsible for the cost of having the necessary field investigations



performed by competent persons. By approval of this ordinance, the North Carolina Division of Water Quality hereby authorize appropriately trained City staff to make a field determination that a water mapped as perennial is actually intermittent and to determine that a water mapped as intermittent is actually ephemeral.

*2. Reduction of Excess Post-Construction Aquatic Buffer.* Property owners may petition the Stormwater Administrator for reduction of the portion of any Post-Construction Aquatic Buffer that exceeds State minimum requirements if the property owner agrees to establish and maintain:

a) vegetation within the buffer zone to meet standards set forth in the Best Management Practices Manual or approved by the Stormwater Administrator as being in accord with such manual, and

b) a level-spreader outside of the buffer zone ensuring sheet flow entering the buffer or undertakes other mitigating stormwater management measures approved by the Stormwater Administrator as acceptable under industry standards.

*3. Buffer Width and Zone:* The width of the aquatic buffer zone is measured horizontally from the top of bank to the landward side of the watercourse. (i.e. moving perpendicularly away from the water toward uplands or disturbed areas).

*4. Substantial Improvements:* For substantial improvements on parcels that have previously been developed, where the improvement is not exempt from the Post-Construction Stormwater Control regulations of subsection 7-12-2(f), the aquatic buffer must be restored by removing built-upon areas from the aquatic buffer zones and by planting and landscaping the aquatic buffer per landscape requirements as set forth in the UDO where practicable. If complete restoration of the aquatic buffer is not practicable, other mitigating stormwater management measures that enhance the function of the available buffer or otherwise substantially replace the function of the aquatic buffer may be used for compliance with this section, as approved by the Stormwater Administrator.

